IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 214 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX
Versus
JAYANT EXTRACTION INDUSTRIES

Appearance:
1. INCOME TAX REFERENCE No. 214 of 1986
MR BB NAYAK FOR MR MANISH R BHATT for Applicant.
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 05/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in granting relief on export interest claimed for weighted deduction u/s.35(B)(1)(b)(viii) of the I.T.Act,1961 ?"

2 On behalf of the applicant Mr.B.B.Nayak has appeared and there is no appearance on behalf of the respondent though served.

3 The assessment years under consideration are assessment years 1977-78, 1978-79 and 1979-80. Though the Tribunal has stated that "export interest" is entitled to weighted deduction u/s.35B(1)(b)(viii) of the Income-tax Act,1961, we find that for each of the years under consideration different items are involved. The details as are available from the respective assessment years are :

Assessment Years.	Amount.	Nature of Expenditure.
1977-78	4,21,247/-	Port shipment interest.
1978-79	3,55,128/-	Foreign Exchange Commission.
1979-80	1,39,929/-	Foreignh Exchange Commission.

4. The Tribunal has in its consolidated order clubbed all the three items together and relying upon the case of C.I.T. Vs. Vippy Solvex Products Pvt.Ltd., reported in 159 I.T.R.487 (M.P.), directed the Income Tax Officer to allow weighted deduction u/s.35B(1)(b)(viii) of the Act. We have gone through the decision of Madhya Pradesh High Court which has been referred to and followed by the Tribunal and we find that the items with which the Madhya Pradesh High Court was called upon to

deal with are different from the items which we are called upon to decide. Further more, sub-clause (viii) of section 35B(1) specifically relates to expenditure incurred towards performance of service outside India. We do not find anything on record to show whether the expenditure in question for any of the years under consideration was incurred for any service performed outside India. Prima facie, burden to establish this would be on the assessee making the claim. In the assessment orders also, we find that in relation to items under consideration it has been observed that they do not fall within any of the sub-clause of section 35(B(1) of the Act.

4. In view of this factual matrix it is not possible for us to opine as to whether items in question fall within either sub-clause (viii) or any other sub-clause of section 35B(1) of the Act. Hence, we decline to answer the question referred to us. The Tribunal is directed to decide the controversy afresh after bringing the necessary evidence on record and giving opportunity to both the sides and pass a reasoned order.

5. The Reference is disposed of accordingly with no order as to costs.

Sd/- Sd/-
(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt